IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.181 of 2006
Date of decision 12 .3.2007

Commissioner of Central Excise Commissionerate, Rohtak
.. Appellant

Versus

M/s S.B. Packaging Ltd. .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mrs.Daya Chaudhary, Asstt. Solicitor General of India,

M.M.Kumar, J.

This appeal filed under Section 35 G of the Central Excise Act, 1944 (for bvrevity 'the Act') is directed against the order dated 18.5.2006 (Annexure P.3) passed by the Custom Excise and Service Tax Appellate Tribunal, New Delhi holding that imposition of penalty on the manufacturer was not justified. The revenue has claimed that the following substantive question of law would arise for determination of this Court:

> " Whether CESTAT is correct in holding the penalty equivalent to disputed duty amount under Section 11 AC of Central Excise Act,1944 is not leviable where disputed duty amount is deposited prior to issue of show cause notice."

It appears that the authorities had detected shortage of 780 kgs of Chemicals (inputs) and 2501 Kgs of Polyester Film (finished goods) valued at Rs. 628314.00 resulting in alleged evasion of central excise duty of Rs. 54912.00 and Rs. 45,618.00 respectively. The Central Excise Officer compared the stock with the statutory record maintained by the party. The Adjudicating Officer recorded that there were certain omission and

commissions and accordingly while raising demand of duty levied penalty as well under Rule 25 of the Central Excise Rules, 2002 (for brevity 'the Rules') read with Section 11 AC of the Act. Amount of central excise duty amounting to Rs.1,00,530/- determined had already been deposited by the assessee under Section 11 (1)(A) of the Act. An equal amount of penalty under Rule 25 of the Rules read with Section 11 AC of the Act was also imposed alongwith penalty of Rs. 25,000/- imposed on Shri Amit Banga, Director of the Company under Rule 26 of the Rules. The afore-mentioned view of the Adjudicating Officer was accepted by the Commissioner when he passed final order on 30.11.2005. The Tribunal accepted the contention that the duty amount was paid before issuance of show cause notice and therefore no penalty was imposable. Accordingly, the Tribunal set aside the penalty on the manufacture as well as on the Director. Feeling aggrieved, the revenue has approached this Court by claiming that a substantive question of law, as noticed above, would arise for determination of this Court.

Having heard Mrs. Daya Chaudhary, learned Assistant Solicitor General, we are unable to find any legal infirmity in the impugned order because on the plain language of Section 11AC of the Act it is required to be established that there was intention to evade payment of duty by a person who was liable to pay duty as determined under sub section 2 of Section 11 A of the Act. Order passed by the Adjudicating Officer and the final order do not record any finding that there was any intention to evade payment of duty. We have repeatedly asked the learned counsel for the revenue to read this finding but she could not find any such finding on record. Moreover, the duty was paid before the issuance of a show cause

notice and it has been accepted by the Tribunal to be a factor sufficient to show that there was no intention to evade duty. Therefore, we do not feel the necessity to admit this appeal on the basis of the substantive question of law claimed by the revenue. The appeal is devoid of merit and is thus liable to be dismissed.

For the reasons afore-mentioned, this appeal fails and the same is dismissed.

(M.M.Kumar)
Judge

(Rajesh Bindal)
Judge

12.3.2007
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